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Stacey Kaminer – April 19, 2021

Page 1

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 MASTER DOCKET 18-MD-2865 (LAK)  
4 CASE NO. 18-CV-09797

5 IN RE:

6 CUSTOMS AND TAX ADMINISTRATION OF  
7 THE KINGDOM OF DENMARK  
(SKATTEFORVALTNINGEN) TAX REFUND  
8 SCHEME LITIGATION

9  
10  
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12  
13  
14 DEPOSITION OF  
15 STACEY KAMINER  
VOLUME 1

16 Monday, April 19, 2021  
17 8:07 a.m. – 4:46 p.m.

18 Remote Location  
19 Via Huseby Connect  
20 All Parties Remote

21  
22  
23  
24 Stenographically Reported By:  
25 Erica Field, FPR

Confidential – Attorneys' Eyes Only  
Stacey Kaminer – April 19, 2021

Page 6

1 Markets, Ltd.

2 MR. BLESSINGTON: I should've also made it  
3 clear that Brandon Dillman is also on from K&L  
4 Gates representing Stacey Kaminer.

5 Whereupon,

6 STACEY KAMINER,  
7 having been first duly sworn or affirmed, was examined  
8 and testified as follows:

9 THE WITNESS: Yes.

10 MR. OXFORD: Just before we start, John,  
11 did you want to put a statement on the record  
12 about the protective order.

13 MR. BLESSINGTON: I just want to make sure  
14 that everybody who is actually listening in is  
15 subject to the protective order that's in this  
16 case. Because when we are doing it remotely — I  
17 mean, actually, now that that person has dropped,  
18 we can see everybody's name.

19 But obviously, we are going to be  
20 discussing some confidential information and we  
21 want to make sure it's subject to the protective  
22 order.

23 MR. KAPLAN: This is Marty Kaplan speaking.  
24 For the record, Scott Goldstein may join this and  
25 he obviously is a defendant and subject to the

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Stacey Kaminer – April 19, 2021

Page 57

1 it.

2 Q. Was Acer being compensated for introducing  
3 the pension plans to ED&F?

4 A. We didn't get -- I wouldn't characterize it  
5 that way, no. Acer didn't actually have to introduce the  
6 pension plans to ED&F, per se, because the people that  
7 worked on that desk came from MF Global, which had  
8 relationships with the pension plans already.

9 Q. Each of the nine Acer plans had a  
10 preexisting relationship with the former MF Global team  
11 that went to ED&F?

12 A. Yes.

13 Q. Let's take a look at Exhibit 2420, please.  
14 (Exhibit 2420 was marked for  
15 identification.)

16 A. Okay.

17 BY MR. OXFORD:

18 Q. It's an e-mail from Alan Goldman on which  
19 you are copied, from July of 2015. Mr. Goldman is having  
20 an e-mail exchange about Acer invoices with  
21 Joseph Sipkin, S-I-P-K-I-N, from Lerner Sipkin, correct?

22 A. Correct.

23 Q. And Lerner Sipkin were Acer's accountants,  
24 correct?

25 A. Lerner Sipkin was only responsible for the

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Stacey Kaminer - April 19, 2021

Page 63

1 MR. BLESSINGTON: Objection.

2 You may answer.

3 A. Yes.

4 BY MR. OXFORD:

5 Q. And what -- how -- how is that fee  
6 negotiated?

7 MR. BINDER: Objection to form.

8 A. I would say my -- more understanding is  
9 that the fee itself in the next column is more what is  
10 negotiated and, thereby, the rate is negotiated because  
11 they are a mathematical calculation. I -- I wouldn't  
12 necessarily -- when I look at it, I don't separate one  
13 from the other. I think it's a distinction without a  
14 difference whether or not we agreed on 116,870 or agreed  
15 on the same number, as expressed as a percentage of the  
16 dividend times the shares.

17 BY MR. OXFORD:

18 Q. Okay. So it's your -- it's your testimony  
19 that what was negotiated as a fee for Acer between Acer  
20 and ED&F is the dollar, or in this case, the Danish krone  
21 figure, rather than a percentage?

22 A. Yes.

23 Q. Okay. And who negotiated that fee for Acer  
24 and ED&F -- withdrawn.

25 Who at Acer and ED&F negotiated that fee,

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Stacey Kaminer - April 19, 2021

Page 64

1 the -- the dollar or the -- the currency amount?

2 MR. BINDER: Objection to form.

3 A. That would have been a conversation that  
4 we -- that either -- well, I would have been involved in,  
5 Bob Crema may have been involved in, that would have  
6 happened with Victoria, Mark Whitehead. They would have  
7 been involved in one of -- at least one of them and  
8 potentially, also, they might have involved others from  
9 the desk, such as Sara Mina.

10 BY MR. OXFORD:

11 Q. Okay. And -- and how did -- how did --  
12 withdrawn.

13 So were you involved in negotiating that  
14 fee?

15 A. Yes.

16 Q. Okay. Because you -- you omitted  
17 yourself -- withdrawn.

18 You'd -- how -- you were involved. So what  
19 factors went into arriving at the -- the currency fee  
20 here? So for the Christian Hansen 800,000 shares of  
21 Christian Hansen, each of those ED&F fee of 116,870  
22 Danish krone, how was that fee arrived at?

23 MR. BINDER: Objection to form.

24 A. That fee would have been based on the  
25 transaction that ED&F enters into or facilitates for

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Stacey Kaminer - April 19, 2021

Page 66

1 So I do think that it gives a full picture.

2 BY MR. OXFORD:

3 Q. Okay. Isn't a real answer to the question  
4 from Acer's accountants that -- the one you gave me a few  
5 moments ago -- that the invoice was developed by giving  
6 Acer approximately 50 percent of ED&F's fees that they  
7 earned on the trades with the ED&F plan -- with the Acer  
8 plans?

9 MR. BLESSINGTON: Objection to form.

10 MR. BINDER: Objection.

11 You may answer.

12 A. I think the real answer is the one I gave  
13 you.

14 BY MR. OXFORD:

15 Q. So let -- let's just back up for a second.

16 It's your testimony that Acer billed ED&F  
17 based on a percentage of ED&F's profits on the Danish  
18 trading that ED&F did with the Acer plans, correct?

19 MR. BINDER: Objection to form.

20 MR. BLESSINGTON: Objection.

21 You may answer.

22 A. Yes.

23 BY MR. OXFORD:

24 Q. And Acer's bill is based on a mathematical  
25 formula related to ED&F profits on the Danish trading

Confidential – Attorneys' Eyes Only  
Stacey Kaminer – April 19, 2021

Page 67

1 that ED&F did with the Acer plans, correct?

2 MR. BINDER: Objection to form.

3 A. Yes.

4 BY MR. OXFORD:

5 Q. And that mathematical formula is that Acer  
6 gets about 50 percent of ED&F's profits, correct?

7 MR. BINDER: Objection to form.

8 A. Yes.

9 BY MR. OXFORD:

10 Q. And what's happening here, Ms. Kaminer, is  
11 that Acer's invoices are reverse engineered so that the  
12 invoices appear to be calculated by a negotiated rate,  
13 applied to the number of shares borrowed and the dividend  
14 per share, correct?

15 MR. BLESSINGTON: Object as to form.

16 A. I object to the characterization. It  
17 sounds — where I'm saying that everything about dividend  
18 arbitrage is expressed as a percentage of the dividend,  
19 they are not reverse engineered, they are using the  
20 prototypical calculation that's involved in that strategy  
21 to begin with.

22 You're supposing that ED&F's fee was not in  
23 and of itself, therefore expressed as a percentage of the  
24 dividend, times the number of shares or calculated that  
25 way.

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Stacey Kaminer – April 19, 2021

Page 93

1 A. Okay. So that's actually me e-mailing her.

2 Q. Oh, you're quite right. Thank you for the  
3 correction. That makes my follow-up question easier.

4 What do you mean by "the Ballance boys"?

5 A. So Simon and actually, his business  
6 partner, Joe Penna, were originally -- when they  
7 originally introduced themselves to us in 2010, the  
8 company that they were doing business under was called  
9 Ballance, the main company and it just stuck.

10 Q. I see. So when you refer to Ballance boys,  
11 you're referring to Mr. Penna and Mr. Pearson, who are  
12 now associated with Kingham?

13 A. Correct.

14 Q. Okay. You go on to say: I think the goal  
15 of the call is just to make sure no toes are stepped on  
16 and we are all making money.

17 Do you see that?

18 A. Yes.

19 Q. What do you mean by that?

20 A. I mean, because of the fact that Simon had  
21 a very longstanding relationship with Mark Whitehead, who  
22 was at MF Global, heading the desk and moved over and was  
23 heading the desk at ED&F, I did -- and also, because I  
24 felt like we had developed an independent, good  
25 relationship with the desks, such as Victoria at ED&F,



Confidential – Attorneys' Eyes Only  
Stacey Kaminer – April 19, 2021

Page 94

1       that I didn't want anyone to feel like Simon -- I didn't  
2       want anyone to feel like they were taking ownership of  
3       the relationship with us. Like, that we felt Simon's  
4       relationship to us was more important than we felt our  
5       relationship to ED&F was.

6               Q.     And did you subsequently have the telephone  
7       call that's mentioned in this e-mail?

8               A.     I wouldn't see any reason why not. But as  
9       I'm sitting here today, I can't recall this specific  
10      phone conversation.

11              Q.     Okay. And what was the ultimate outcome of  
12      the -- the discussions that are reflected in this e-mail?

13              A.     The ultimate outcome was that, I think,  
14      everybody understood that Ballance -- see, I just did  
15      it -- Kingham was wanting to take advantage of their  
16      funding line to its fullest. And when they didn't feel  
17      like they could do that with their existing -- I don't  
18      want to say customers for them because I don't think  
19      Kingham was set up to have customers.

20                    So maybe in the same general client, they  
21      had other pension plans they transacted with that -- that  
22      they would want it to be a situation where they could  
23      still use that funding, but use Acer plans still involve  
24      ED&F, still get all the services from ED&F, which  
25      included the funding, but just use the Acer plans, as

Confidential – Attorneys' Eyes Only  
Stacey Kaminer – April 19, 2021

Page 108

1           A.     I don't know who Chris Smith is. I'd  
2     assume he is an ED&F folk. And Stephen Hawksworth, I  
3     never had any interactions with him, but I've seen his  
4     name on ED&F documents, and Verrona's name likewise.

5     BY MR. OXFORD:

6           Q.     And I thought you mentioned Mr. Hawksworth  
7     earlier and you knew him and his involvement in dividend  
8     arbitrage trading at MF Global and ED&F Man.

9                     Am I misremembering?

10          A.     I mentioned Mark Whitehead.

11          Q.     Mark Whitehead, okay. Sorry, you're quite  
12     right. Thank you for that clarification.

13                     So this is -- purports to be a meeting or a  
14     report of a call between you and Mr. Crema on behalf of  
15     Acer and three ED&F Man employees, Victoria Foster,  
16     Mark Whitehead, and Chris Henstock.

17                     Do you see that?

18          A.     Yes.

19          Q.     And the date is March 13, 2012.

20                     Do you recall such a meeting or a call?

21          A.     I don't recall that specific call, no.

22          Q.     Did you have a number of calls with ED&F  
23     Man around this time?

24          A.     Yes.

25          Q.     It says: Stacey and Bob are keen to

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Stacey Kaminer – April 19, 2021

Page 109

1 on-board similar funds to those we have worked with  
2 previously.

3 Just pausing there, is that a reference to  
4 the prior employment of Ms. Foster and others as MF  
5 Global?

6 MR. BINDER: Objection to form. Lacks  
7 foundation.

8 A. Yes.

9 BY MR. OXFORD:

10 Q. Are you aware or are you not that  
11 Ms. Foster and Mr. Whitehead worked at MF Global prior to  
12 coming to ED&F Man?

13 A. I am aware.

14 Q. And you are aware that because the Acer  
15 plans transacted with those individuals -- withdrawn.

16 You're aware that because the Acer plans  
17 used ED&F and MF Global as broker dealer prior to its  
18 collapse, correct?

19 MR. BINDER: Objection to form. Compound.

20 MR. BLESSINGTON: Objection.

21 You may answer.

22 A. I am aware because the plans were customers  
23 of MF Global.

24 BY MR. OXFORD:

25 Q. Ms. Foster goes on to say: Some trades

Confidential – Attorneys' Eyes Only  
Stacey Kaminer – April 19, 2021

Page 164

1 BY MR. OXFORD:

2 Q. Ms. Kaminer, just want to make sure we're  
3 on the same page about a couple of terms, industry terms  
4 before we go into the next line of questioning.

5 Can you tell me what the record date is in  
6 the context -- these questions are all in the context of  
7 dividend arbitrage trading.

8 A. Record date is a date set by the company,  
9 that they will say that is the date on which anybody who  
10 is an owner of record is entitled to the dividend or  
11 corporate action, generally speaking.

12 Q. So -- so differently, it's the date in  
13 Denmark at least, on which a shareholder has to be  
14 registered with VP securities in order to get paid a  
15 dividend by the company?

16 MR. BLESSINGTON: Object as to form.

17 You may answer.

18 A. Actually, I think Denmark works a little  
19 bit differently. I'm not sure you would have to be  
20 registered with VP securities. And they don't always go  
21 off record dates. A lot of Denmark centered around X  
22 dates, record dates and that's it, sorry.

23 BY MR. OXFORD:

24 Q. Okay. So you don't know what the relevance  
25 of the record date is for Danish securities trading?

Confidential - Attorneys' Eyes Only  
Stacey Kaminer - April 19, 2021

Page 165

1           A.     I just know that it's actually different  
2     from what -- what a lot of the rest of the market does  
3     to -- Denmark is a trade date market and not a settlement  
4     date market.

5           Q.     Okay. But you -- you don't know what, if  
6     any, significance the record date has with respect to  
7     Danish securities trading in dividend arbitrage?

8           A.     I would still think it held -- for me, it  
9     held similar significance.

10          Q.     Similar to?

11          A.     What my understanding was elsewhere.

12          Q.     Which is what?

13          A.     That it is that date on which the company  
14     would look to in order to determine entitlement to a  
15     dividend.

16          Q.     And you're making a distinction between  
17     entitlement and paying?

18          A.     Not -- I'm not sure of your distinction,  
19     actually.

20          Q.     Okay. Would you agree with the following  
21     statement that the record date is the date on which the  
22     shareholder needs to be registered in order to receive a  
23     dividend from the company that issued the shares?

24          A.     Generally speaking, yes.

25          Q.     What's the pay date?

Confidential – Attorneys' Eyes Only  
Stacey Kaminer – April 19, 2021

Page 166

1           A.     Pay date would be the day that the dividend  
2 funds were actually paid to the shareholders.

3           Q.     What's the X date?

4           A.     The X date would be the day on which before  
5 the stock trades with the dividend entitlement. And it's  
6 the cutoff date, whereby if you buy the security after  
7 the X date, you're not entitled to a dividend or a  
8 corporate action.

9           Q.     What is cum-dividend mean?

10          A.     Generally, thought to mean with -- with the  
11 dividend.

12          Q.     So to use your example, if I place a trade  
13 before the X date to purchase shares, I'm entitled to the  
14 dividend on those shares, and that would be a cum-dividend  
15 purchase?

16          A.     Yes.

17          Q.     And what is a cum/cum trade?

18          A.     It's not terminology that I usually use.

19          Q.     Okay. You don't know what a cum/cum trade  
20 is in the context of dividend arbitrage trading?

21          A.     It's more of a European terminology and it  
22 doesn't have as much significance for me. It's not part  
23 of my vernacular.

24          Q.     You don't -- okay.

25                    You don't know what it means in the context

Confidential – Attorneys' Eyes Only  
Stacey Kaminer – April 19, 2021

Page 167

1 of trading in Danish securities?

2 A. As I said, cum-dividend, to me, means  
3 buying with the dividend.

4 Q. Do you know what a cum-ex trade is?

5 A. What it means to me is buying with the  
6 dividend and selling without the dividend entitlement.

7 Q. Do you understand that a cum-ex trade  
8 means, in the context of Danish securities, that the -- a  
9 trade is made before the X date, but a settlement is  
10 after the record date?

11 MR. BLESSINGTON: I'm sorry, Neil. Could  
12 you repeat that? I apologize.

13 MR. OXFORD: Sure.

14 BY MR. OXFORD:

15 Q. Do you understand that a -- that a cum-ex  
16 trade means that the trade date is before the X date, but  
17 the settlement date is after the record date?

18 A. No. I wouldn't of -- I -- I don't use that  
19 cum-ex terminology and honestly, I know it's taking on a  
20 life of its own, and so I don't feel like I am the person  
21 to ask about that.

22 Q. Okay. What you do is -- let's just try it  
23 a slightly different way.

24 The -- the trades that the Acer plans did  
25 in Danish securities, were they all placed before the

Confidential – Attorneys' Eyes Only  
Stacey Kaminer – April 19, 2021

Page 168

1 X date?

2 A. Yes.

3 Q. And did they settle before or after the  
4 record date, or was it a mix?

5 A. I'd have to look at the confirms to answer  
6 that accurately.

7 Q. Sitting here today, you have no idea?

8 A. Sitting here today, I couldn't answer that  
9 for every transaction. They, generally.

10 Q. Okay. So -- so generally, did -- did you  
11 consider the -- the Acer plans Danish trades to be --  
12 once it settled before or after the record date or was it  
13 a mix?

14 A. I just don't want to speculate on that. I  
15 cannot recall.

16 Q. Okay. Was it a matter of importance to you  
17 when the trades settled before or after the record date?

18 A. Since in Denmark, the importance was the  
19 trade date, it wasn't of significance to me as much as  
20 the settlement date.

21 Q. In the -- the Acer plans Danish dividend  
22 arbitrage trading, did ED&F borrow the securities --  
23 (Reporter clarification.)

24 Q. -- to sell to the plans?

25 MR. BINDER: Objection to form.



Confidential – Attorneys' Eyes Only  
Stacey Kaminer – April 19, 2021

Page 169

1 A. I know there were instances that they did.

2 BY MR. OXFORD:

3 Q. And it's known as short-selling, isn't it,  
4 where you make a sale that you don't -- of securities you  
5 don't own?

6 MR. BINDER: Objection to form.

7 MR. BLESSINGTON: Objection.

8 A. Yes.

9 BY MR. OXFORD:

10 Q. And sometimes the -- and ED&F would borrow  
11 those shares in order to cover their short sale?

12 MR. BINDER: Objection to form.

13 MR. BLESSINGTON: Objection.

14 A. ED&F would have been required like a broker  
15 dealer here in the U.S., to locate to securities before  
16 being able to enter into a short sale and yes, they would  
17 have been required to borrow the securities in order to  
18 effectuate the sale, complete.

19 BY MR. OXFORD:

20 Q. Okay. Was it -- was it relevant to you  
21 when ED&F actually borrowed the shares that they were  
22 selling to the Acer plans?

23 MR. BINDER: Objection to form.

24 A. The relevance would be did -- were they  
25 able to settle the purchase.

Confidential – Attorneys' Eyes Only  
Stacey Kaminer – April 19, 2021

Page 170

1 BY MR. OXFORD:

2 Q. Didn't matter to you when they borrowed the  
3 shares, it was whether they could settle the agreed  
4 purchase with the Acer plans; is that your view?

5 MR. BINDER: Objection to form.

6 A. Yeah.

7 BY MR. OXFORD:

8 Q. How did the -- withdrawn.

9 So the -- the Acer plans had assets of  
10 between, what, 500,000 and \$1 million maybe, before they  
11 started do Danish dividend arbitrage trading; is that  
12 about a fair range?

13 A. No.

14 Q. What's a fair range?

15 A. A fair range would be up to multiples of  
16 \$1 million.

17 Q. Which plans had multiples of millions of  
18 dollars?

19 A. American Investment Group, Kamco LP, that's  
20 off the top of my head.

21 Q. Okay. And some of the plans, I think you  
22 mentioned maybe Mr. Mitchell's plan, had a little less?

23 A. I don't think I characterized how much he  
24 had in relation to the numbers you just said. I just  
25 said he had less than the others.

Confidential – Attorneys' Eyes Only  
Stacey Kaminer – April 19, 2021

Page 182

1       were contemplating and trying to enter into contracts to  
2       do business with them, and it has a Canadian name on it.

3               Q.       Does this -- you testified this morning  
4       that the structure of Danish dividend arbitrage was not  
5       materially different from the dividend arbitrage trades  
6       you and Acer have done in other jurisdictions.

7                       Do you remember telling me that?

8               A.       Yes.

9               Q.       Is -- would it be fair to characterize the  
10       spreadsheet attached to Exhibit 2480 as a generic trade  
11       structure for dividend arbitrage?

12              A.       No.

13              Q.       Why not?

14              A.       It was something that I only recall using  
15       actually in Canada, and it wasn't something we used with  
16       ED&F at all. It was a starting point for a conversation.

17              Q.       Did you ever provide a trade schedule like  
18       this to ED&F?

19              A.       I don't see this as a trade schedule,  
20       sorry.

21              Q.       Okay.

22              A.       What do you mean by that?

23              Q.       Trade structure. Would -- would you agree  
24       with me that this is a trade structure?

25              A.       Yes.

Confidential – Attorneys' Eyes Only  
Stacey Kaminer – April 19, 2021

Page 183

1 Q. Okay. Did you ever provide — provide a  
2 trade structure for dividend arbitrage in Danish  
3 securities, did you ever provide that to ED&F?

4 A. No.

5 Q. Did you ever create such a trade for any  
6 purpose?

7 A. You're going to need to clarify the  
8 question.

9 Q. Sure.

10 So you see that attached to 2480 is a — is  
11 a trade structure for a Canadian security?

12 A. Correct.

13 Q. And it's done in the context of a dividend  
14 arbitrage trade, correct?

15 A. Correct.

16 Q. Okay. Did you ever create a similar  
17 document relating to Danish dividend arbitrage?

18 A. No.

19 Q. Why not?

20 A. They were already doing Danish dividend  
21 arbitrage when they approached me and —

22 Q. Who is they?

23 A. They, ED&F.

24 Q. Who approached you?

25 A. Victoria Foster.

Confidential – Attorneys' Eyes Only  
Stacey Kaminer – April 19, 2021

Page 184

1 Q. So it's your testimony that your — Acer  
2 followed ED&F's previously used structure for Danish  
3 dividend arbitrage trading?

4 MR. BLESSINGTON: Objection.  
5 You can answer.

6 A. With one caveat.

7 BY MR. OXFORD:

8 Q. What's the caveat?

9 A. We liked holding the securities longer  
10 term.

11 Q. And did ED&F ever provide you with a trade  
12 structure for Danish dividend arbitrage?

13 A. We would have discussed it verbally.

14 Q. But nothing in writing?

15 A. No.

16 Q. Any particular reason — any reason why  
17 not?

18 A. I don't recall them ever providing us a  
19 trade structure in writing on anything.

20 Q. Just taking a quick look at Exhibit 2480,  
21 can you point out the material differences between the  
22 structure reflected there and the structure ultimately,  
23 you used for the Danish dividend arbitrage trading  
24 through ED&F?

25 A. To begin with, the client would not have

Confidential – Attorneys' Eyes Only  
Stacey Kaminer – April 19, 2021

Page 185

1 included a 501C3 for Denmark. There were not cash --  
2 cash-settled calls involved in the Danish transaction.  
3 There was no attached due bill. The trades did settle a  
4 regular way.

5 Since there were no calls, ED&F didn't  
6 exercise anything. Since there were no due bills, there  
7 wasn't any delivery. Since Denmark had a reclaim  
8 procedure, they would not have received 100 percent of  
9 the dividend on payable date.

10 You can see that Canada had a reclaim at  
11 source, DTC would not have been involved. Again, ED&F  
12 did not charge the client a dividend equivalent. That's  
13 what I see, just as I look at it here.

14 Q. Okay. I'm just going back to Stock Landing  
15 for a moment.

16 Did you have insight into how the Stock  
17 Landing agreements that ED&F entered into with  
18 counterparties to supply Danish shares to Acer plans were  
19 structured?

20 MR. BLESSINGTON: Objection.

21 A. No.

22 BY MR. OXFORD:

23 Q. Do you know from, your experience in the  
24 market, how stock landing generally works?

25 A. Yes.

Confidential – Attorneys' Eyes Only  
Stacey Kaminer – April 19, 2021

Page 192

1 A. Yes.

2 Q. And what -- what is this you're sending to  
3 Mr. Crema?

4 A. And we're just scrolling to the actual  
5 spreadsheet. This is a list of stocks that may have  
6 involved Simon.

7 Q. Simon is Simon Pearson of Kingham?

8 A. Yes.

9 Q. Who put this spreadsheet together?

10 THE WITNESS: Can you scroll down to the  
11 second?

12 MR. BLESSINGTON: That one?

13 THE WITNESS: Yes.

14 A. Without seeing the metadata, I don't know.

15 BY MR. OXFORD:

16 Q. Okay. You actually anticipated by next  
17 representation very cleverly, which is that the metadata  
18 indicates it was created in -- created by SK.

19 A. It's not completely on my spreadsheet. I  
20 can tell because my spreadsheets didn't have lots of  
21 those columns. But they would have had -- and -- and I  
22 was in some ways responsible for the capitalizations, but  
23 some of those columns were edited someone else because  
24 that's not the sign of my spreadsheets.

25 Q. Who -- who's the someone else here?

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Stacey Kaminer – April 19, 2021

Page 193

1           A.     I'm going to assume someone at Kingham, if  
2     it's a sign-in related spreadsheet or a copied and pasted  
3     from something I got sent.

4           Q.     So it's your testimony you -- this document  
5     was not created by Acer?

6           A.     Correct.

7           Q.     Even though the metadata has your initials  
8     in it?

9           A.     As I said, it could've been something I  
10    copied and pasted into an excel spreadsheet.

11          Q.     Someone would have to e-mail it for you for  
12    you to copy and paste it, right?

13          A.     Yes.

14          Q.     Again, I will represent we have nothing in  
15    production from your counsel that suggests this was sent  
16    to you from Mr. Pearson or anybody else?

17          A.     Now that you're sort of expanding on that,  
18    someone could have faxed me the spreadsheet, and I could  
19    have created the Excel to manipulate the cells more  
20    effectively and just retyped what was in the facts.

21          Q.     And is that your practice when you're  
22    creating long Excels, you usually look to someone to fax  
23    you some information, then you manually type it in?

24                 MR. BLESSINGTON: Objection.

25                 You may answer.



Confidential - Attorneys' Eyes Only  
Stacey Kaminer - April 19, 2021

Page 194

1           A.     When it came to Simon, he was notorious for  
2     faxing me information. I don't know why.

3     BY MR. OXFORD:

4           Q.     Okay. So -- so you don't know -- which  
5     information in this spreadsheet did not come from you?

6           A.     I can't say just looking at it what  
7     information wasn't generated by me specifically. I can  
8     say I would have been somebody who organized the stock, X  
9     date, record date, pay date. I certainly would have  
10    organized the number of outstanding shares and that type  
11    of information in this instance, when Simon was involved.

12          Q.     Okay. What -- what does Column I mean,  
13    cum/cum all in? You mentioned an all-in number in your  
14    testimony earlier today?

15          A.     I see Column I as saying shares. Am I on  
16    the wrong sheet?

17          Q.     I don't think so. To the --

18                 MR. BLESSINGTON: Sheet 1 or Sheet 2, Neil?

19                 MR. OXFORD: Sheet 1.

20    BY MR. OXFORD:

21          Q.     So just to the left of shares, there's a  
22    column called cum/cum all in.

23                 Do you see that?

24          A.     Hold on.

25                 MR. BLESSINGTON: On Sheet 1.

Confidential – Attorneys' Eyes Only  
Stacey Kaminer – April 19, 2021

Page 195

1           A.     Yeah, there definitely -- there's a window  
2     pain because it goes D to L.

3           Okay. Now, we're on the one that says I.  
4     It would have meant to me that potentially, the all-in of  
5     those shares.

6           Q.     And what does all-in of those shares mean  
7     to you?

8           A.     A percentage of the dividend, what the  
9     pension would have to -- the cost of acquiring those  
10    shares.

11          Q.     And that's a percentage of the close  
12    dividend, correct?

13          A.     Correct.

14          Q.     So just to use your example, let's look at,  
15    say, the 4th row, the TDC shares.

16          A.     Yes.

17          Q.     The cum/cum all-in rate is 91 percent.  
18    Actually, it's -- it's not 91 for all of them, but it's  
19    91 for -- for TDC.

20                 In this situation, the pension plan would  
21    be acquiring the shares of TDC and it would receive a  
22    dividend, which is net of tax, i.e., 73 percent of the  
23    dividend, but would have to pay out 91 percent as the  
24    cost of acquiring the share.

25          A.     Yes.

Confidential – Attorneys' Eyes Only  
Stacey Kaminer – April 19, 2021

Page 196

1 Q. So just bear this number in mind, that the  
2 cost of cum/cum, the cum/cum all-in range for Danish  
3 shares is, we can agree, 85 to 91 percent there -- 88.5  
4 to 91 percent?

5 A. On this spreadsheet, yes.

6 Q. Yeah. And is that your understanding of  
7 the ranges within the normal market range?

8 A. I don't recall now what the normal market  
9 range was for Denmark.

10 Q. Okay. And just for the record, I think the  
11 way it's being printed on my exhibit, I have Column I,  
12 but the cum/cum all-in is Column H?

13 A. You were correct on Sheet 1, cum/cum all-in  
14 is Column I. It's on Sheet 2 that it's H.

15 Q. Okay. So just turning to -- so what's the  
16 gross dividend amount Column H in Sheet 1?

17 A. Can you highlight one of those for me?  
18 It's the number of shares times the dividend.

19 Q. Okay. Turning to Sheet 2, if we could.  
20 Can I direct your attention to Column K.

21 A. I'm there.

22 Q. That's entitled: Negative Dividend.  
23 Do you see that?

24 A. Yes.

25 Q. What does that term mean to you in the

Confidential - Attorneys' Eyes Only  
Stacey Kaminer - April 19, 2021

Page 197

1 context of this spreadsheet?

2 A. That means the 100 percent of the  
3 dividend -- well, no. It means the all-in number, less  
4 the 73 percent of the dividend times the number of  
5 shares.

6 Q. And you see in Column L, it's entitled:  
7 Cum-Ex All-in?

8 A. Yes.

9 Q. You see there's -- there's a percentage  
10 muck like in the cum -- cum all-in column?

11 A. Yes.

12 Q. And you see that the -- for the same  
13 securities, the cum-ex all-in percentage is lower than  
14 the cum/cum all-in percentage?

15 A. Yes.

16 Q. So we have a range for the Danish shares of  
17 84.5 to 87 percent for cum-ex all-in.

18 Do you see that?

19 A. That 87 percent, if you're looking at 18  
20 and 19, that's a Belgium share.

21 Q. You're quite right. Thank you for  
22 correcting my error.

23 So the cum-ex all-in price is 85 --  
24 84.5 percent for all of the Danish shares here?

25 A. Yes.

Confidential – Attorneys' Eyes Only  
Stacey Kaminer – April 19, 2021

Page 198

1 Q. And the cum/cum all-in price is more  
2 extensive, it's higher, it's 88.5 to 91 percent in the  
3 cum/cum all-in column, correct?

4 A. Yes.

5 Q. Which means that cum/cum trade is more  
6 specific than a cum-ex trade for a plan to do, correct?

7 A. On an all-in basis, yes.

8 Q. Okay. And we can see that, because if you  
9 look across to the gross P&L column for cum/cum, the  
10 trade was 7.5 million TDC shares results in a gross P&L  
11 of 193,000.

12 Do you see that?

13 A. Yes.

14 Q. And the same trade on a cum-ex basis with a  
15 lower cum-ex all-in percentage results in a higher P&L of  
16 more than 333,000.

17 Do you see that?

18 A. Can you just go back and see the number of  
19 shares?

20 Q. Yes. Can you tell me why the cum-ex trades  
21 are more profitable than the cum/cum trades?

22 A. My understanding was that those were being  
23 sourced from a seller who was not entitled to put in a  
24 reclaim any higher than 73 percent.

25 Q. Where did you get that understanding from?

Confidential – Attorneys' Eyes Only  
Stacey Kaminer – April 19, 2021

Page 199

1 A. I can't recall specifically.

2 Q. So it's your testimony that the difference  
3 between the cum/cum trade and the cum-ex trades is the  
4 source of the shares?

5 A. I would say the underlying entitlement of  
6 the shares.

7 Q. And it has nothing to do with your  
8 understanding of when the trades actually settle?

9 A. No.

10 Q. Do you have an understanding that cum-ex  
11 trades are considered to be riskier than cum/cum trades?

12 A. No.

13 Q. When you gave your answer a moment ago, the  
14 difference between the cum/cum trade and the cum-ex trade  
15 is the underlying entitlement to the shares, what did you  
16 mean by that?

17 A. There are treaties and therefore,  
18 entitlements between 73 percent and 100, using Denmark as  
19 the example. And to go back to when you were talking  
20 about stock loan and an entitlement that sort of travels  
21 with the stock loan, by way of example, if the pension  
22 plan did loan out it's securities in Danish securities,  
23 then, and it loaned them out over the record date, they  
24 would still be entitled to the same dividend treatment as  
25 if they had never loaned out the shares.

Confidential – Attorneys' Eyes Only  
Stacey Kaminer – April 19, 2021

Page 200

1                   So if the pension plan loans out the shares  
2           and it happens to go over a record date, then they too  
3           would get a payment under the stock loan umbrella and  
4           theirs would be reflective of their entitlement, they  
5           would get 100 percent of the dividend.

6                   If the -- and that would be considered the  
7           underlying entitlement.

8                   Q.     So it's the tax status of the provider of  
9           the shares that determines, in your mind, the pricing  
10          difference between cum/cum trade and cum-ex transactions?

11                  A.     As I am looking at this spreadsheet, yes.

12                  Q.     And generally, also, is that your  
13          understanding?

14                  A.     That's not a straightforward a question  
15          because the terminology cum-ex has taken on a life of its  
16          own in Europe and come to mean things that it was never  
17          my understanding that they meant at the time.

18                  Q.     So in order to do -- in order to understand  
19          the entitlement to the dividend, as you have just  
20          explained, wouldn't you need to know who the counterparty  
21          was?

22                  A.     No.

23                  Q.     You would just need to be their tax status?

24                  A.     It's the lender's responsibility to convey  
25          to the borrower, such as ED&F might be the borrower, what

Confidential – Attorneys' Eyes Only  
Stacey Kaminer – April 19, 2021

Page 201

1 the underlying dividend entitlement is.

2 Q. What the underlying dividend entitlement of  
3 who?

4 A. Of -- well, let's say -- let's say  
5 Morgan Stanley is lending out shares to ED&F, and they  
6 happen to be lending them over a record date, and it's a  
7 U.S. security, is that U.S. security ultimately owned by  
8 potentially a client of Morgan Stanley and they know that  
9 that client who owns it is a U.S. person or a European  
10 person?

11 And depending on that, then that would --  
12 that was the type of information that they would pass on.  
13 This is 100 percent stock, this is 85 percent stock, now  
14 maybe Morgan Stanley themselves borrowed that stock that  
15 they end up lending to ED&F from Deutsch Bank. When  
16 Deutsch Bank lends to Morgan Stanley, it's their  
17 responsibility to say, this is 100 percent stock, this is  
18 85 percent stock.

19 At some point at the origination of a loan,  
20 whether it's the party that immediately lends it to an  
21 ED&F or whether it's two parties away, they know the  
22 account that it's being lent out of, and they know their  
23 entitlement and they convey it and it follows the stock  
24 along the chain.

25 Q. When you told us a few moments ago that the



Confidential – Attorneys' Eyes Only  
Stacey Kaminer – April 19, 2021

Page 202

1 terminology cum-ex has taken on a life of its own in  
2 Europe and come to mean things that it was never your  
3 understanding it meant at the time, what do you -- what  
4 do you mean by that?

5 A. I mean, there's lots of news articles about  
6 cum-ex transactions in relation to trading in Europe and  
7 how it characterizes them is not what my understanding  
8 was at the time.

9 Q. What was your understanding at the time?

10 A. I feel I explained that in terms of the  
11 underlying dividend entitlement.

12 Q. I see. Was -- has the -- the press in  
13 Europe about cum-ex change your view of what a cum-ex  
14 transaction actually is?

15 A. Just because that's how they want to  
16 characterize it or its in the news, I don't feel I should  
17 change my opinion necessarily, and it certainly doesn't  
18 change what my opinion was at the time doing the  
19 transactions.

20 Q. Have you come to learn that Acer was  
21 actually facilitating cum-ex transactions for the Acer  
22 plans?

23 A. No.

24 MR. BLESSINGTON: Object as to form.

25

Confidential – Attorneys' Eyes Only  
Stacey Kaminer – April 20, 2021

Page 245

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 MASTER DOCKET 18-MD-2865 (LAK)  
4 CASE NO. 18-CV-09797

5 IN RE:

6 CUSTOMS AND TAX ADMINISTRATION OF  
7 THE KINGDOM OF DENMARK  
(SKATTEFORVALTNINGEN) TAX REFUND  
8 SCHEME LITIGATION

9  
10  
11 CONFIDENTIAL – ATTORNEYS' EYES ONLY

12  
13  
14 DEPOSITION OF  
15 STACEY KAMINER  
VOLUME 2

16 Tuesday, April 20, 2021  
17 8:08 a.m. – 2:35 p.m.

18 Remote Location  
19 Via Huseby Connect  
20 All Parties Remote

21  
22  
23  
24 Stenographically Reported By:  
25 Erica Field, FPR

Confidential – Attorneys' Eyes Only  
Stacey Kaminer – April 20, 2021

Page 249

1       Thereupon,  
2       the following proceedings began at 8:08 a.m. :

3                   THE VIDEOGRAPHER: We are back on the  
4                   record. This begins Day 2, Volume II of the video  
5                   deposition of Stacey Kaminer. The time is  
6                   8:08 a.m., April 20, 2021.

7                   Will the court reporter please administer  
8                   the oath.

9       Whereupon,  
10                   STACEY KAMINER,  
11       having been first duly sworn or affirmed, was examined  
12       and testified as follows:

13                   THE WITNESS: I do.

14                   MR. BINDER: Before you begin your  
15                   questioning, I just wanted to follow up on a  
16                   statement I made on the record yesterday.

17                   During your questioning of Ms. Kaminer, you  
18                   stated that, quote, ED&F's counsel had represent  
19                   ed to us that there was no recording that they  
20                   have of your placing an order orally for the  
21                   shares prior to the 20th of November, closed  
22                   quote.

23                   So at the time I stated that as current  
24                   counsel for ED&F in this matter, I was unaware of  
25                   such representation. So since the end of the

Confidential – Attorneys' Eyes Only  
Stacey Kaminer – April 20, 2021

Page 269

1 Q. The title is: Dividend Finder Fee Billing  
2 for Danske Bank, Novozymes and Pandora?

3 A. Yes.

4 Q. And he writes: Hi, Marcus/Chris, attached  
5 is the Acer group LLC billing for those three shares,  
6 correct?

7 A. Yes.

8 Q. What was Acer invoicing ED&F for here?

9 A. Our fees.

10 Q. What were your fees based on?  
11 What did you do to earn those fees?

12 A. I believe I stated yesterday that ED&F paid  
13 us based on our relationship, based on overall value that  
14 we brought to the table, based on the instances when we  
15 did locate stock, and that our dividend finder fee didn't  
16 just cover locating, sourcing, whatever word you want to  
17 use for the term stock, and they did not separate out  
18 well, this is Belgium, this is Canada, this is Denmark.  
19 They viewed us as a relationship in the whole.

20 Q. The one thing that we can be sure is, is  
21 that Acer services for Denmark did not include finding  
22 any dividends.

23 We can agree on that?

24 A. We can agree that Acer services for Denmark  
25 did not include locating stock that ultimately got

Confidential – Attorneys' Eyes Only  
Stacey Kaminer – April 20, 2021

Page 327

1 plans so it would be ED&F's fee, and without re-reviewing  
2 all of the transactions and looking at account statements  
3 and re-creating them, I can't tell you off the top of my  
4 head in dollars what they retained.

5 Q. You don't have a sense of the amount of  
6 that 18 million that actually went to the Acer plans and  
7 then be kept without paying in some form, whether you  
8 call it a fee, whether you call it a profit share, to  
9 Acer, to Kingham, to the market and to ED&F?

10 A. I don't call it a profit share. I do call  
11 it a fee; and no, and the reason I know the other number  
12 is because that's what was attached to the lawsuit.

13 Q. If we wanted to calculate how much of the  
14 18 million, to use your round number, how much of that  
15 was actually retained after all fees, costs, expenses had  
16 been paid by the plans, how would we do that?

17 A. It would be difficult to use -- try and use  
18 a real-life example and it's easier, I find, when  
19 explaining something like this to sort of use round  
20 numbers.

21 Q. And I appreciate that.

22 A. The pension plan, as an example, had a  
23 million shares of a stock, and that stock was paying \$1.  
24 They would be entitled to a million dollars worth of  
25 dividend.

Confidential – Attorneys' Eyes Only  
Stacey Kaminer – April 20, 2021

Page 328

1                   In a case of Denmark, they would receive  
2       73 percent of that \$1 million on payable date, so  
3       730,000. And they would have suffered the withholding of  
4       the 27 percent which equates to an additional 270,000.

5                   When they enter into the transaction, they  
6       buy the security and they sell the hedge, there's that,  
7       what we have now been discussing as an all-in number that  
8       gets paid in that transaction away to the -- that's the  
9       cost of obtaining ownership of that security.

10                  If we use an example of 90 all-in, that  
11       means that 90 percent of the dividend is a cost in  
12       establishing that ownership.

13                  So if we look at that in terms of the  
14       numbers that we have been discussing, that equates to  
15       900,000. Right? 90 percent of that 1 million that we  
16       have been talking about.

17                  That means that out to the market goes all  
18       of that. It doesn't go to ED&F, it doesn't go to the  
19       plan, it doesn't go by way of ED&F to Acer. It's out to  
20       the -- potentially to the -- as we have seen on some of  
21       the lending, like to the lender of the security, and  
22       where that goes from there, none of us are privy to -- no  
23       customer is privy to that information.

24                  So now we are dealing with a hundred  
25       thousand. And from there, of that hundred thousand, we

Confidential – Attorneys' Eyes Only  
Stacey Kaminer – April 20, 2021

Page 329

1 have been discussing that they retain 5 to 10 percent.  
2 Let's -- even for the sake of this argument -- use the  
3 lower number, the 5 percent number. That's what they  
4 retain. 95 percent of that goes to execution fees,  
5 financing fees, custody fees, ED&F's fees, which include  
6 custody fees.

7 And so therefore, of that hundred thousand,  
8 you're talking about ED&F getting in the range of  
9 probably -- let's see, five -- probably 90, maybe as low  
10 as 80, and then Acer is invoicing half of that. And so  
11 now you're talking about 40,000 to ED&F as an ending net  
12 profit on the trade and 40,000 to Acer and 5,000 to the  
13 plan.

14 I'm hoping that type of example maybe made  
15 it easier to --

16 Q. Yeah. That was very helpful, actually.

17 MR. OXFORD: Let's go off the record.

18 THE VIDEOGRAPHER: We are off the record.

19 The time is 10:43 a.m.

20 (A brief recess was held from 10:43 a.m. to  
21 11:07 a.m.)

22 THE VIDEOGRAPHER: We are back on the  
23 record. The time is 11:07 a.m.

24 BY MR. OXFORD:

25 Q. Ms. Kaminer, in the example that we just